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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/614,267	07/02/2003	Russell E. Abbink	US0069.US2	7777
41868	7590	03/08/2005	EXAMINER	
INLIGHT SOLUTIONS, INC. 800 BRADBURY, SE ALBUQUERQUE, NM 87106				CONNOLLY, PATRICK J
		ART UNIT		PAPER NUMBER
		2877		

DATE MAILED: 03/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/614,267	ABBINK, RUSSELL E.	
	Examiner	Art Unit	
	Patrick J. Connolly	2877	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM
 THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 18 January 2005.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-41 is/are pending in the application.
 4a) Of the above claim(s) 41 is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1-40 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on 02 July 2003 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>9/17/04</u> | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-40 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-41 of copending Application No. 10/342,578. Although the conflicting claims are not identical, they are not patentably distinct from each other because of the following:

The methods and apparatus of the instant claims are drawn towards creating fixed angular relationships between optical elements using refractive "OPD" elements in interferometers while the claims of copending '578 are drawn towards reducing angular error in interferometers using corrective elements. The scope of the limitations of the copending claims are narrower than those of the instant claims, but teach all the limitations of the instant claims so as to make the scope of the instant claims obvious in view of the scope of said copending claims.

As to the instant claims 1-19, claims 1-20 and 21-30 of '578 are narrower in scope and therefore already cover the limitations of said instant claims.

Art Unit: 2877

As to the instant claims 20-22, claims 31-35 of '578 are narrower in scope and therefore already cover the limitations of said instant claims.

As to the instant claims 23 and 40, claims 31-36 of '578 are narrower in scope and therefore already cover the limitations of said instant claims. Regarding sample placement, it would have been obvious to use the interferometric alignment method in conjunction with a sample for measurement.

As to the instant claims 24-36, claims 31-36 of '578 are narrower in scope and therefore already cover the limitations of said instant claims.

As to the instant claims 37-39, claims 37-40 of '578 are narrower in scope and therefore already cover the limitations of said instant claims.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Allowable Subject Matter

If a timely terminal disclaimer was filed with respect to the analysis above, then claims 1-40 would be allowable.

The following is a statement of reasons for the indication of allowable subject matter:

As to claims 1, the prior art of record, taken alone or in combination, fails to disclose or render obvious, an interferometer including: a OPD element having variable optical path therethrough, mounted relative to a beamsplitter defining a port optical path from a port; and a reflective element mounted relative to the beamsplitter in a fixed angular relationship and defining an optical path from the beamsplitter to the reflective element and back to the

beamsplitter, passing through the OPD element at least once, in combination with the rest of the limitations of claim 1.

As to claims 20 and 23, the prior art of record, taken alone or in combination, fails to disclose or render obvious a method including: mounting a beamsplitter and two reflective elements in fixed angular relationships with respect to each other; and mounting an OPD element relative to the beamsplitter such that light from a port of the interferometer passes through said element before reaching the beamsplitter and such that one of the optical path encounters a variable path length through said OPD element, in combination with the rest of the limitations of claims 20 and 23.

As to claim 24, the prior art of record, taken alone or in combination, fails to disclose or render obvious an interferometer including: an OPD element, mounted relative to first and second reflective elements such that a first optical path passes through the OPD element along a path of variable optical length between the first and second reflective elements and such that a second optical path passes through the OPD element along a path of variable optical length between the first and second reflective elements, in combination with the rest of the limitations of claim 24.

As to claims 37 and 40, the prior art of record, taken alone or in combination fails to disclose or render obvious a method including: mounting an OPD element relative to a beam splitter, a first reflective element, and a second reflective element such that a first optical path passes through the OPD element along a path of variable optical length between the first and second reflective elements and such that a second optical path passes through the OPD element

along a path of variable optical length between the first and second reflective elements, in combination with the rest of the limitations of claims 37 and 40.

Art Unit: 2877

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patrick J. Connolly whose telephone number is 571.272.2412. The examiner can normally be reached on 9:00 am - 7:00 pm Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory J. Toatley, Jr. can be reached on 571.272.2800 ext. 77. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

pjc



Gregory J. Toatley, Jr.
Patent Examiner
SMAC05